

IN THE MATTER OF MERCHANT MARINER'S DOCUMENTS Z-141264-D2
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: John William MACK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1798

John William MACK

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 August 1969, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman's documents for twelve months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Able seaman on board SS WHITTIER VICTORY under authority of the document above captioned Appellant:

- (1) on 25, 26, and 27 June 1969, at a foreign port, was absent from the vessel without authority;
- (2) on 14 July 1969, at Naha, Okinawa, was absent from the vessel without authority; and
- (3) failed to join the vessel on 15 July 1969 at Naha. At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification.

The Investigating Officer introduced no evidence but added a statement that Appellant had rejoined the vessel at another port after the failure of 15 July 1969.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of twelve months.

The entire decision was served on 26 August 1969. Appeal was timely filed.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an able

seaman on board SS WHITTIER VICTORY and acting under authority of his document. On those dates Appellant performed or failed to perform as set out in the specifications found proved.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant improvidently failed to have counsel, and that the order is too severe in that it will be harmful to Appellant's family.

APPEARANCE: Appellant,pro se.

OPINION

I

Appellant says, on appeal, that he was in a period of drinking when he committed the offenses involved and when he elected to proceed at the hearing without counsel, and he should not have pleaded guilty.

The record shows clearly that Appellant was advised of his right to counsel when the charges were served on him on 15 August 1969 and when the hearing was convened on 19 August 1969. He made a free election to proceed without representation. Appellant does not specifically assert that he was too intoxicated on 15 August to understand the nature of the proceedings for which notice was being served upon him, or that he was too intoxicated on 19 August to understand what was happening at the hearing. His conduct, in fact, negatives a belief that either was the case.

He appeared for hearing at the time and place specified. This indicates that he knew what he was doing then and was conscious of the service of the notice of hearing on 15 August.

Further, Appellant's position at the hearing was that he was contrite and recognized that his misconduct aboard WHITTIER VICTORY had been caused by excessive drinking. Indeed, his notice of appeal urges the same.

Appellant's failure to have counsel at the hearing cannot, therefore, be considered as a valid ground for appeal. He made a conscious election to waive his right and hoped to reply on contrition for mitigation.

Appellant's true complaint is that the order is too severe. (He does not contest the findings of fact as to any individual specification found proved.) Suspension for one year is a severe

order, usually the severest short of revocation. It remains then only to look at Appellant's record to see whether a one year suspension is appropriate. The record is extensive:

- (1) 28 July 1943, New York, New York, one month on six months' probation for failure to join SS CHARLES SUMMER;
- (2) 24 June 1961, San Francisco, California, admonished for failure to join SS SEAFAIR;
- (3) 16 July 1962, Seattle, Washington, admonished for failure to join SS MAXTON;
- (4) 21 July 1965, New York, New York, warned for two failures to join SS TRUST CO.
- (5) 30 January 1968, New Orleans, Louisiana, suspended for one month plus three months on twelve months' probation for eight offenses of failure to perform duties and one of failure to join SS STEEL SURVEYOR; and
- (6) 19 June 1968, Port Arthur, Texas, suspended for six months plus six months on eighteen months' probation for six offenses of failure to perform duties aboard SS DEL SOL. (This included three months for violation of the 30 January 1968 order of probation.)

The important fact is that the probation ordered at Port Arthur on 19 June 1968 was violated by the offenses in the instant case. The Examiner in the instant case had no alternative to invoking the six months' suspension remaining from the Port Arthur order. His addition of six more months for the offenses found proved here is not too severe in view of the lengthy record of Appellant.

The effect upon Appellant's family is deplorable, but Appellant has brought it about himself.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 22 August 1969, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Dated at Washington, D.C., this 2nd day of July 1970.

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Counsel

Waiver of right to

Order of Examiner

Not excessive

Prior probationary suspension included